No. 89

In the Supreme Court of the United States

OCTOBER TERM, 1963

UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND LOCAL UNION 5895, UNITED STEELWORKERS OF AMERICA, AFL-CIO,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD

AND

CARRIER CORPORATION

BRIEF OF ASSOCIATION OF AMERICAN RAILROADS AS AMICUS CURIAE IN SUPPORT OF RESPONDENT, CARRIER CORPORATION

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The Association of American Railroads hereby files its Brief *amicus curiae* in this case, pursuant to Rule 42(2) of the Rules of the Supreme Court. The Brief is accompanied by written consent to its filing from the Solicitor General of the United States on behalf of the National Labor Relations Board, the United Steelworkers of America, AFL-CIO, and Local Union 5895 United Steelworkers of America, AFL-CIO, and Carrier Corporation. These are all of the parties in the case.

I. INTEREST OF AMICUS CURIAE

The Association of American Railroads (hereinafter referred to as the A.A.R.) is a voluntary, unincorporated, nonprofit organization composed of member railroad com-

panies operating in the United States, Canada, and Mexico. The member railroads operate more than 95 per cent of the total railroad mileage and have operating revenues of approximately 98 per cent of the total railroad operating revenues of all railroads in the United States. The activities of the A.A.R. cover a wide range, having to do with such matters as research, operations, car service, safety, public relations, accounting, statistics, law, and Federal legislation and regulation, insofar as those matters require joint handling in the interest of safe, adequate and efficient railroad service to the public.

The A.A.R. is the joint representative and agent of these railroads in connection with Federal legislation and with legal matters of common concern to the industry as a whole. It has an interest in significant interpretations of Federal legislation that will apply generally to all of its members. The issues raised in the present case relating to the proper construction of the secondary boycott provisions of the National Labor Relations Act are important to the entire railroad industry.

II. INTRODUCTORY STATEMENT

The Court of Appeals for the Second Circuit decided that the unions representing Carrier Corporation employees violated section 8(b)(4)(B) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. §§ 151, et seq.), by the activities directed against the New York Central Railroad, found by the Trial Examiner and the National Labor Relations Board. Those activities took place at a typical railroad industrial lead track, located on railroad property, over which the railroad performed its common carrier obligation to four major industries, General Electric, Western Electric, Brace-Mueller-Huntley, and Carrier Corporation. Briefly, the unions interfered with the railroad's service to Carrier Corporation by picketing on the railroad's right-of-way, obstructing train movements in and

out of the lead track area by massing about the locomotives and cars, placing an automobile on the tracks in front of the train, lying down on the tracks in front of the train, and threatening train-crew personnel with physical violence. (Joint Appendix, pp. 82, 86-92, 94, 104, 136, 316, 319-325; General Counsel's Exhibits 6, 7, 9).

We think that those activities violated the secondary boycott provisions of the statute for reasons set out in the Brief of Carrier Corporation. We agree with those reasons and adopt them. There are several points, however, that we would like to emphasize that have a bearing on the issues before the Court.

III. POINTS MADE BY AMICUS CURIAE

1. The 1959 amendments of the secondary boycott provision were enacted to close a loophole that deprived railroads of needed protection from interference by striking industrial pickets.

2. The Court of Appeals correctly decided that the railroad's ownership of the right-of-way at which the union's activities took place was a material and significant fact in determining that those activities violated section 8(b)(4)(B) of the National Labor Relations Act.

IV. ARGUMENT

Point 1

The 1959 Amendments of the Secondary Boycott Provision Were Enacted to Close a Loophole that Deprived Railroads of Needed Protection from Interference by Striking Industrial Pickets

Railroads are under a statutory and common law duty to render transportation service to shippers who request it, and the fact that a shipper's employees are on strike and may seek to prevent performance of service by the railroad will not necessarily excuse failure of the railroad to

perform. Railroads have a statutory duty to provide transportation service on reasonable request under section 1(4) of the Interstate Commerce Act,[1] and are subject to statutory liability in damages for failure to perform it.[2] They have been held liable in damages for failing to furnish service as required by statute, even though their failure resulted from a strike and picket line at the shipper's place of business. *Minneapolis & St. Louis Ry. Co.* v. *Pacific Gamble Robinson Co.*, 215 F.2d 126, (8th Cir., 1954). Under the common law, railroads are also duty-bound to furnish transportation and have been held liable in damages for non-performance, although failure resulted from a protracted dispute between the shipper and its own employees in which the shipper's premises were picketed. *Montgomery Ward & Co.* v. *Northern Pacific Terminal Co.*, 128 F.Supp. 475 (D.C. Oregon, 1953) and cases cited therein. In *Montgomery Ward, supra*, it made no difference that as between the shipper and its employees, the shipper was at fault for engaging in unfair labor practices (128 F.Supp., at p. 489); the shipper still recovered from the railroad. Efforts by railroads and other common carriers to limit their duty to serve and thus their liability to shippers by tariff rules providing that service will not be rendered at strike-bound plants have been disapproved by the I.C.C. *Pickup and Delivery Restrictions, California Rail*, 303 I.C.C. 579 (1958).

It is true that the duty to furnish transportation is not unlimited. A railroad may be relieved by the fact or apparent probability of substantial physical danger to its em-

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[1] 49 U.S.C. § 1(4) (54 Stat. 900 (1940)) provides, in part: "It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor . . ."

[2] 49 U.S.C. § 8 (24 Stat. 382 (1887)) provides, in part, as follows: "that in case any common carrier subject to the provisions of this part . . . shall omit to do any act, matter, or thing in this part required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this part . . ."

ployees in a strike situation. *Meier & Pohlmann Furniture Co. v. Gibbons*, 233 F.2d 296, (8th Cir., 1956) *cert. den.* 352 U.S. 879. As formulated by the 8th Circuit in *Pacific Gamble Robinson, supra*, the test is whether the shipper's request for service is reasonable in the light of all circumstances, as to which the Court said (215 F.2d, at p. 132):

> "It would hardly be a reasonable request for carrier service, for a shipper to demand in effect, by virtue of that result necessarily being inherent in any attempted compliance, that a railroad require its employees to spill their blood in his existing strike situation, or that it compel them to subject themselves and their families to a real and substantial danger of retaliatory bodily harm in their outside life from his striking employees.
>
> "That much, public policy, social dignity, and congressional concern for the safety and welfare of carrier employees as reflected in the spirit of modern railway-labor and other legislation, would seem inescapably to command."

The difficulties in applying this rule to concrete situations are evident. Will the situation require railroad employees "to spill their blood," or will it not? Will employees "subject themselves and their families to a real and substantial danger of retaliatory bodily harm in their outside life" from the strikers? How can railroad management possibly answer such questions with assurance? A management which resolves doubts in favor of safety, runs the risk that a later trier of facts (as in *Pacific Gamble Robinson*) will hold it liable in damages. The mere presence of a picket line, without violence, is no excuse at all. *Montgomery Ward & Co. v. Northern Pacific Terminal Co., supra.*

The problem presented by the case before the Court is chronic in the railroad industry. Cases of interference with railroad service by striking industrial pickets occur fre-

quently.[3] Strikers prevent or deter railroads from furnishing service at industrial plants by maintaining pickets at points where railroad sidings enter the plants or at points on railroad lines approaching those entrances, and the pickets appeal to train crews not to move cars in and out. Pickets trespass on railroads' privately-owned rights-of-way to appeal to train crews. They mass about locomotives and cars to impede and prevent their movement. Tracks are sometimes blocked, as in this case, by automobiles and human bodies, and train crews are threatened with physical violence. Actual violence is sometimes used against train crews. As the New York Central did here, railroads attempt to run their trains with supervisory personnel when regular crews, whose members belong to railroad labor organizations, refuse to cross picket lines. In all of these situations, the labor dispute between the shipper and his employees has nothing to do with the railroad or the railroad unions; there is no community of interest between the striking employees and the railroad labor organizations.

The railroads felt that they were entitled to relief from

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[3] *Atchison, T. & S.F. Ry.* v. *Iron Workers Local 546*, 26 LRRM 2367 (D.C. Okla. 1950); *Atchison, T. & S.F. Ry.* v. *Sillamps*, 26 LRRM 2310 (D.C. N.M. 1949); *sub nom., Smotherman* v. *United States*, 186 F.2d 676 (10th Cir. 1950), 27 LRRM 2219; *Baltimore & O. R.R.* v. *Marine Engineer's Ben. Asn.*, 40 LRRM 2313 (Md. Cir. Ct. 1957); *Erie R.R.* v. *Longshoremen, ILA*, 117 F.Supp. 157 (D.C. W. N.Y. 1953), 33 LRRM 2234; *Illinois Central R.R.* v. *Teamsters Local 568*, 90 F.Supp. 640 (D.C. W.La. 1950), 26 LRRM 2246; *In Re Missouri Pacific*, 25 LRRM 2135 (D.C. E.Mo. 1948); *Knapp* v. *Steelworkers*, 179 F.Supp. 90 (D.C. Minn. 1959), 45 LRRM 2003; *Louisville & N. R.R.* v. *Railroad Trainmen*, 35 LRRM 2615 (Ky. Cir. Ct. 1955); *Lumber & Sawmill Workers Local 2409*, 122 N.L.R.B. 1403 (1959), 43 LRRM 1324; *rev'd. sub nom., Great Northern Ry.* v *N.L.R.B.*, 272 F.2d 741 (9th Cir. 1959), 45 LRRM 2206; *Great Northern Ry.* v. *Lumber & Sawmill Workers Local 2409*, 140 F.Supp. 393 (D.C. Mont. 1955), *aff'd.* 232 F.2d 628 (9th Cir. 1956); *Missouri Pacific R.R.* v. *Brick & Clay Workers Local 602*, 238 S.W. 2d 945 (Ark. S.Ct. 1951), 27 LRRM 2573; *Montgomery Ward & Co.* v. *Northern Pacific Terminal Co.*, 128 F.Supp. 475 (D.C. Ore. 1953); *Pacific Gamble Robinson Co.* v. *Minneapolis & St.L. Ry.*, 105 F.Supp. 794 (D.C. Minn. 1952); *aff'd. in part, sub nom., Minneapolis & St. L.*

these practices, and in the course of the hearings in 1959 before the House Committee on Labor and Education on legislation that was finally enacted as the Labor-Management Reporting and Disclosure Act of 1959, the railroad industry requested Congress to provide relief for its problem.[4] Congress provided such relief by enacting the secondary boycott provisions now contained in § 8(b)(4)(i) and (ii)(B).

The original secondary boycott provision, § 8(b)(4) of the Labor-Management Relations Act (29 U.S.C. § 158(b)(4)), declared it to be an unfair labor practice for a labor organization or its agents to engage in or to induce or encourage "the employees of any employer" to engage in, a strike or a concerted refusal in the course of their employment to do certain things for prohibited purposes specified in the statute. § 2(2) of the Labor-Management Relations Act (29 U.S.C. § 152(2)) provides that the term "employer" shall not include "any person subject to the Railway Labor Act . . ." § 2(3) (29 U.S.C. § 152(3)) provides that the term "employee" shall not include "any individual employed by an employer subject to the Railway Labor

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Ry. v. *Pacific Gamble Robinson Co.*, 215 F.2d 126 (8th Cir. 1954); *Penello* v. *Seafarers Int'l. Union*, 164 F.Supp. 635 (D.C. E.Va. 1957), 40 LRRM 2180; *Seafarers Int'l. Union*, 122 N.L.R.B. 52 (1958), 43 LRRM 1063; *rev'd. Superior Derrick Corp.* v. *N.L.R.B.*, 273 F.2d 891 (5th Cir. 1960), 45 LRRM 2506; *International Brotherhood of Teamsters, Local 202*, 84 N.L.R.B. 360 (1949), 24 LRRM 1254; *sub nom., International Rice Milling Co.* v. *N.L.R.B.*, 183 F.2d 21 (5th Cir. 1950), 26 LRRM 2295; *rev'd.* 341 U.S. 665 (1951); *Teamsters* v. *Missouri Pacific R.R.*, 27 LRRM 2576 (Ark. S.Ct. 1951); *Wichita Falls R.R.* v. *Machinists*, 266 S.W. 2d 265 (Tex. Ct. Civ. App., 1954), 33 LRRM 2609; *Woodworkers Local S-426*, 116 N.L.R.B. 1756 (1956), 39 LRRM 1082; *rev'd sub nom., W. T. Smith Lumber Co.* v. *N.L.R.B.*, 246 F.2d 129 (5th Cir. 1957), 40 LRRM 2276; *Le Bus* v. *Woodworkers Local S-426, S-429*, 142 F.Supp. 875 (D.C. N. Ala. 1956), 38 LRRM 2441).

[4] Statement of Waldron A. Gregory, *Hearings before a joint subcommittee of the Committee on Labor and Education, House of Representatives, on H.R. 3540, H.R. 3302, H.R. 4473 and H.R. 4474*, 86th Cong., 1st Sess., Part 5, at p. 1846 (1959).

Act." Construing the secondary boycott provisions with the statutory definitions of "employer" and "employee," the National Labor Relations Board concluded that there was no violation of the statute if a labor organization induced or encouraged the employees of a railroad to engage in a strike or concerted refusal to perform work for the purposes set out in the statute. *International Brotherhood of Teamsters (The International Rice Milling Co.)*, 84 N.L.R.B. 360 (1949); *International Woodworkers of America (W. T. Smith Lumber Co.)*, 116 N.L.R.B. 1756 (1956); *International Brotherhood of Teamsters (The Alling & Cory Company)*, 121 N.L.R.B. 315 (1958); *Lumber & Sawmill Workers Local Union 2409 (Great Northern Railway Co.)*, 122 N.L.R.B. 1403 (1959). The National Labor Relations Board persisted in this view despite the uniform refusal of courts of appeal to agree with it. *International Rice Milling Co.* v. *N.L.R.B.*, 183 F.2d 21 (5th Cir., 1950); *W. T. Smith Lumber Co.* v. *N.L.R.B.*, 246 F.2d 129 (5th Cir., 1957); *Great Northern Railway Co.* v. *N.L.R.B.*, 272 F.2d 741 (9th Cir., 1959). Each of the foregoing Court of Appeals cases involved picketing of railroads and railroad sidings adjacent to the place of business of the primary employer with which the union was involved in a labor dispute, and in each of them the Court of Appeals found such picketing to be violative of the statute.

Then Congress enacted the Labor-Management Reporting and Disclosure Act of 1959, which contained several amendments of the secondary boycott provisions. One of these amendments made it an unfair labor practice for a labor organization to induce or encourage "any individual employed by any person engaged in commerce" to do certain things, instead of "the employees of any employer." The purpose of this change was to solve the difficulty that arose when the N.L.R.B. construed the original secondary boycott provisions in conjunction with the statutory definitions of "employer" and "employee," and to extend to

railroads and certain other employers the protection from secondary boycotts that employers in general had.

There is no doubt that Congress acted to eliminate a loophole in the law with respect to secondary boycott protection for railroads. Senator Morse, in speaking of his willingness to accept some modifications on the subject of secondary boycotts, said:

> "Similarily [sic], a secondary boycott carried out by inducing railroad employees should not be permitted, merely because the employees' employer is not covered by the Act." (Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, volume II, page 1426).

Also, then Senator Kennedy and Congressman Thompson prepared an analysis of the secondary boycott amendments contained in the Landrum-Griffin bill after it passed the House, which analysis contained the following statement:

> "1. Railroad, Airline, and Public Employees
>
> "The NLRA definitions of 'employer' and 'employee' exclude various special categories of employees among them agricultural workers, Government employees and employees of railroads and airlines who are subject to the Railway Labor Act. Since Section 8(b)(4) presently speaks of inducing 'the employees of any employer,' it does not apply to these groups.
>
> "The House bill extends the prohibition to secondary boycotts by agricultural workers, Government employees and employees of railroads and airlines. Apparently the theory is that the omission was simply a mistake in the original draftsmanship.
>
> "The unions argue that since these groups receive none of the benefits of the NLRA they should be subjected to none of the burdens. The railway labor organizations particularly dislike the prospect of involvement with the NLRB. These arguments have some appeal but they do not carry much weight since the

employees who would be forbidden to engage in secondary boycotts have little to gain or lose from such activity.

"We could not seriously object to revising the present law in this respect." (Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, volume II, pages 1706-7).

In an analysis of the conference agreement by Congressman Griffin, one of the authors of the House bill, the following statement appears with respect to the secondary boycott amendment:

"3. Closes loopholes which permitted secondary boycotts involving railroads, municipalities, and governmental agencies because their employees were not 'employees' under definition in the act." (Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, volume II, page 1712).

As is clear from the legislative history, Congress acted to eliminate a loophole in the secondary boycott provisions of the law. The fact that such a loophole existed had been manifested in the cases before the N.L.R.B. in which the Board decided that railroads were not entitled to protection. Those cases involved, typically, interference by striking pickets with the performance of railroad service at struck plants and on railroad sidings and rights-of-way adjacent to those plants. In short, they were cases like this one. The logical conclusion is that Congress, in closing this loophole, meant the amended statute to apply in such situations.

Additional light is shed on the meaning of the 1959 secondary boycott amendments by other portions of their legislative history. The amendment of statutory language from "employees of any employer" to "any individual employed by any person" did not appear in the bill passed by the Senate (S. 1555), although it appeared in another Senate labor reform bill supported by the Administration

(S. 748); it likewise appeared in the bill that finally passed the House of Representatives, and it remained in the bill that was reported from the conference of the Senate and the House and that was agreed to by the Senate and the House. In the course of debate on the floor of the Senate on the Senate bill that had been reported out of committee (S. 1555), Senator Dirksen proposed a series of amendments, including this particular change that would have made the secondary boycott provision applicable to railroads and railroad employees.[8] This particular amendment was explained to the Senate by Senator Goldwater, who was a Senate proponent of this and other Taft-Hartley Act amendments, in the following language:

> "The present secondary boycott provisions of the act also give no protection to railroads or agricultural enterprises since they are excluded from the term 'employer' as defined in the act. Thus, unions which have stopped railroad employees, agricultural workers, and municipal employees from their normal activities in order to retaliate against some other employer have been immune from the act.
>
> • • •
>
> "The word 'person' is used in the proposed amendment to the secondary boycott provision rather than 'employer,' in order to extend the protection of the secondary boycott provisions of the act to public employers, railroads, or agricultural enterprises without subjecting them to other provisions of the act." (105, Cong. Rec., p. 6428 (1959))

Senator Dirksen's proposed amendments were thereafter rejected by the Senate (105 Cong. Rec., p. 6435 (1959)). The bill later passed by the Senate contained no secondary boycott amendments. Minority views were filed to the Senate committee report by Senator Dirksen and Senator Goldwater, who criticized the bill for its failure (among

[8] 105, Cong. Rec., pp. 6411-6412 (1959).

other things) to eliminate loopholes in the ban on secondary boycotts in the following language:

> "(3) *Boycotts by railroad employees, agricultural workers, Government employees, and other groups now excluded from the secondary boycott ban of the Taft-Hartley Act.*—Under the definition section of the Taft-Hartley Act railroad employees, agricultural workers, and governmental employees are not employees within the meaning of the act. The Board has reached the conclusion that secondary boycotts by these exempt categories, and the inducement of such boycotts are not unfair labor practices. (See *International Rice Milling*, 84 N.L.R.B. 360, and *Di Giorgio Wine*, 87 N.L.R.B. No. 125.)
>
> "Secondary boycotts by these groups are just as much against the public interest as boycotts by anyone else. "The bill, S. 748, would extend the ban to these excluded categories by use of the words 'any person' instead of the use of the words 'employees of any employer' in section 8(b)(4)(i) and (ii)." (Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, volume I, page 476.)

The significant thing about the above quotation is the fact that it pinpoints and highlights the Labor Board's decision in the *International Rice Milling Co.* case, in which a striking union interfered with railroad service at a siding adjacent to the struck plant. This indicates that the loophole-closing amendment of the Taft-Hartley Act in S. 748 and in the amendments offered by Senator Dirksen was intended to provide relief in factual situations illustrated by that case. The language in S. 748, the language of the amendment offered by Senator Dirksen, and, most importantly, the language of the bill enacted into law are all identical in this regard. There is no doubt about the meaning attached to that language by Senator Dirksen and Senator Goldwater: it was intended to protect the railroads and their employees from interference by striking pickets at struck industrial plants.

Further evidence of Senator Goldwater's understanding appears in the following analysis by him of the loophole-closing provision of the bill that was finally passed by Congress:

> "Question. Does the new legislation close any other loopholes?
>
> "Answer. The term 'employer' as it's defined in the Taft-Hartley Act excludes certain types of employers. Among them, the most important being railroad employers and their employees, because they are covered under the Railway Labor Act.
>
> "Suppose you get a situation like this: The union has a dispute with Employer A. A, in order to finish his economic processes to make his profit, has got to ship his goods via railroad to its ultimate destination. So the union throws a picket line around the railroad spur at which Employer A's products would normally be loaded onto the freight car. The purpose of that picket line is to induce the railway employees to refuse to load that stuff or to handle it. The Board has said that, under the present language, that is not a violation because railroad employees and railroad employers are not employees or employers under the Taft-Hartley Act.
>
> "Now, under this new bill, instead of using the term, 'to cease doing business with another employer,' it says 'to cease doing business with any other person.' Person includes everybody. That closes that loophole." (Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, volume II, page 1829.)

Senator Goldwater was, as previously noted, a principal proponent in the Senate of an amendment containing the precise language that Congress adopted and enacted; he was also one of the conferees on the part of the Senate in the Senate-House conference committee that was appointed to consider the House and Senate labor bills and that reported a compromise version of the two bills.[6] His

[6] 105, Cong. Rec., p. 15965 (1959).

interpretation of its meaning is therefore entitled to substantial weight.

No doubt the N.L.R.B. and the Steelworkers Union recognize that railroads are entitled to some kind of protection under the amended statute. According to their theory of the law, however, such protection would be limited to situations in which the railroad renders service to an employer that is unconnected with the employer's normal business operations, or perhaps when striking unions engage in activities against a railroad at a point physically remote from the struck employer's plant, e.g., at a railroad freight house or at railroad offices. This would, of course, be a drastic limitation of the law. There is no indication whatever that Congress intended the law to have such a limited application. Such a limitation would be contrary to the intent of Congress to extend significant protection to railroads and railroad employees, as is shown by the legislative history. The situation in which railroads preeminently need the protection is the one in which they are prevented from serving shippers by the activities of industrial strikers at railroad sidings adjacent to struck plants.

Point 2

The Court of Appeals Correctly Decided that the Railroad's Ownership of the Right-of-Way at Which the Union's Activities Took Place Was a Material and Significant Fact in Determining that Those Activities Violated Section 8(b)(4)(B) of the National Labor Relations Act

In deciding that the union activities directed against the New York Central Railroad violated Section 8(b)(4)(B) of the National Labor Relations Act, the Court of Appeals for the Second Circuit recognized and gave effect to the fact that the right-of-way where those activities occurred was owned by the railroad. The fact of railroad owner-

ship was considered to distinguish the case from the Supreme Court decision in the *General Electric* case (*Local 761, Int'l. Union of Elec. Workers* v. *N.L.R.B.*, 366 U.S. 667), in which the Court dealt with the legality of picketing activities at a General Electric plant conducted by striking General Electric employees at a plant entrance owned solely by General Electric. In giving effect to railroad ownership of the right-of-way, the Court of Appeals treated the New York Central Railroad as an adjoining owner of property that was entitled to protection in its business operations from interference and interruption by striking employees of a neighboring business (Carrier Corporation) in whose labor dispute the railroad was not involved. The railroad's relationship to Carrier Corporation at Syracuse was the same as the relationship of an adjoining or neighboring factory that produced a raw material used by Carrier Corporation in manufacturing its products. The fact that such a factory happened to be nearby, in a geographical or physical sense, would be no reason to deny it protection from secondary boycott activities of striking Carrier employees. Likewise, the closeness of the rail right-of-way should not deprive the railroad of such protection.

In briefs filed with this Court, the National Labor Relations Board and the United Steelworkers of America suggest that the railroad company's ownership of its own property is "irrelevant" and "immaterial," that "it made no difference whether the tracks were on land owned by Carrier or the railroad," that "the fact that title to the right-of-way was held by the railroad was wholly immaterial," and that it "made no difference whether the tracks were on land owned by Carrier or the railroad."

The comment of the A.A.R. with respect to the above-quoted assertions is that the ownership of property is a legal fact of undisputed significance in the law of torts, the law of property, and the law of taxation in the United States, and that it should be given equal recognition in the

Federal law of labor relations. Railroads own a substantial amount of real estate in the form of industrial sidings, many of which were built and are maintained by them at their own expense.[7] Real estate taxes have been paid on them for years and still are. The fact of railroad ownership should not be blurred or watered down by verbal dilution. The N.L.R.B. Brief, for example, asserts (p. 10) that "the railroad's mere use of the strip adjacent to the Carrier plant to perform tasks which aid Carrier's everyday operations cannot be regarded as an independent business which would warrant protection against the union's picketing." Why "mere" use? The railroad used its right-of-way and *owned* it in the fullest sense of the word. If the railroad is not an "independent business," what is it? How is the railroad less "independent" than any supplier of raw materials to Carrier? In actuality, the New York Central Railroad is legally and factually distinct from and independent of Carrier Corporation and the other businesses with plants located on its industrial lead track, namely, General Electric, Western Electric, and Brace-Mueller-Huntley. The facts of property ownership and legal identity should not simply be waved aside to facilitate the conclusion that the activities of the striking Carrier employees did not violate the National Labor Relations Act.

We urge the Court not to adopt an interpretation of a Federal statute that involves a disregard of the legal ownership of railroad property, and to affirm the decision of the Court of Appeals for the Second Circuit that recognizes and gives effect to such ownership.

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[7] Railroads report their miles of track operated in Annual Reports to the I.C.C., Form A (Schedule 411). Industry sidings are included in the totals for way switching tracks and yard switching tracks. These figures are summarized in the I.C.C.'s "Transport Statistics in the United States" for the year 1961, p. 6, which shows 26,873 miles of way switching tracks and 59,146 miles of yard switching tracks. The industry track component of these totals is not indicated; no exact figures for industry tracks are available.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing brief has this day been served on each party to this case by mailing copies thereof to the respective counsel of record at their post office addresses, first-class mail, postage prepaid. A copy thereof has also been so mailed to the Solicitor General, Department of Justice, Washington 25, D. C.

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October 23, 1963